SWIDLER
&
BERLIN
CHARTERED

March 20, 1998

BY HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 97-211
Joint Applications of WorldCom, Inc. and MCI Communications Corporation

Dear Secretary Salas:

Transmitted herewith on behalf of WorldCom, Inc. and MCI Communications Corporation please find an original plus twelve (12) copies of the "SECOND JOINT REPLY OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION" to be filed in the above-referenced proceeding. For the Commission's convenience, I have also enclosed a copy of the pleading on a 3.5 inch diskette formatted in an IBM-compatible format using WordPerfect 5.1 for Windows software in a "read only" mode.

I would appreciate it if you would please date-stamp the enclosed extra copy of this filing and return it with the messenger to acknowledge receipt by the Commission.

If you have any questions regarding this submission, please do not hesitate to contact me.

Very truly yours,

Andrew D. Lipman

Andrew D. Lipman

Enclosures
cc: All Parties on the Attached Service List

3000 K Street, N.W. ■ Suite 300
Washington, D.C. 20007-5116
(202)424-7500 ■ Telex 701131 ■ Facsimile (202)424-7643

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 20 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Applications of WorldCom, Inc. and	)	
MCI Communications Corporation for	)	CC Docket No. 97-211
Transfer of Control of MCI Communications	)	
Corporation to WorldCom, Inc.	)	

To: The Commission

SECOND JOINT REPLY
OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION

MCI COMMUNICATIONS CORPORATION

Michael H. Salsbury
Mary L. Brown
Larry A. Blosser
MCI COMMUNICATIONS CORPORATION
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006-3606
(202) 872-1600

Anthony C. Epstein
John B. Morris
Ian H. Gershengorn
JENNER & BLOCK
601 Thirteenth St., N.W.
Washington, D.C. 20005
(202) 659-6000

WORLDCOM, INC.

Andrew D. Lipman
Jean L. Kiddoo
Michael W. Fleming
SWIDLER & BERLIN, CHTD.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Catherine R. Sloan
Robert S. Koppel
WORLDCOM, INC.
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 776-1550

Dated: March 20, 1998

No. of Copies rec'd 0+11
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of WorldCom, Inc. and	)	
MCI Communications Corporation for	)	CC Docket No. 97-211
Transfer of Control of MCI Communications	)	
Corporation to WorldCom, Inc.	)	

To: The Commission

SECOND JOINT REPLY OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION

MCI COMMUNICATIONS CORPORATION

Michael H. Salsbury
Mary L. Brown
Larry A. Blosser
MCI COMMUNICATIONS CORPORATION
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006-3606
(202) 872-1600

Anthony C. Epstein
John B. Morris
Ian H. Gershengorn
JENNER & BLOCK
601 Thirteenth St., N.W.
Washington, D.C. 20005
(202) 659-6000

WORLDCOM, INC.

Andrew D. Lipman
Jean L. Kiddoo
Michael W. Fleming
SWIDLER & BERLIN, CHTD.
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Catherine R. Sloan
Robert S. Koppel
WORLDCOM, INC.
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 776-1550

Dated: March 20, 1998

TABLE OF CONTENTS

SUMMARY

Application of the four factors for merger analysis set forth in *Bell Atlantic/NYNEX* and *BT/MCI* strongly supports the conclusion that the merger of MCI and WorldCom is in the public interest and will enhance competition.

1. **Local exchange market.** The local exchange is a market of over $100 billion, dominated almost totally by the incumbent local exchange carriers who control more than 98 percent of local revenues and access lines. Since all the different geographic local markets share the basic characteristic of near-total incumbent domination, the local markets should be analyzed on a nationwide aggregate basis. The incumbents have been extraordinarily successful at maintaining barriers to entry and keeping out any significant competition. They have defended their entrenched position, despite the market-opening provisions of the Telecommunications Act of 1996 and this Commission's procompetitive decisions. In particular, the incumbents have managed to frustrate attempts to introduce significant competition from carriers seeking to engage in local resale or access to the incumbent carriers' unbundled network elements. The only near-term prospect for local competition is through the slowest, and most capital-intensive method -- construction of local facilities by new entrants.

For meaningful, facilities-based competition to develop, what is required is not more competitors, but *stronger* competitors. The merger will create a more forceful local competitor by combining two companies with complementary advantages. MCI has a broad-based marketing experience, and an expansive residential and large business base. WorldCom has a diverse business base and the local networks of MFS Communications, Inc. and Brooks Fiber Properties, Inc. Because the merged company can expand and accelerate the reach of its local facilities and draw on

the existing customer bases of the two companies, it will be far better able to compete in more locations than would either entity standing alone. Moreover, expansion of the combined company's local exchange networks will enable it to achieve significant savings in access charges paid to the incumbents. These and other savings resulting from the merger will make the combined company's operations more efficient and better enable it to expand its networks and provide quality service at a competitive price.

The merger's potential for enhancing consumer benefit by reducing the incumbents' monopoly margin in the $100 billion local market is enormous. At the same time, the merged company poses no risk of domination of any market, and hence no offsetting threat to consumer welfare.

In the local exchange, the overwhelming competitive problem is the incumbents' near-total monopoly domination -- not the number of competitors sharing the minuscule remaining market share. Decreasing that number by one is actually procompetitive because it will result in a stronger competitor than either of the two companies standing alone. Mergers are anticompetitive when they increase the danger of collusion. The only plausible competitive strategy for the merger company will be to compete vigorously with the incumbents in order to diminish their market dominance. There is simply no danger that the merger company would collude with the incumbents.

2. **Interexchange market.** The interexchange market is properly defined as a single product, nationwide market. It is robustly competitive today, and that competition benefits all areas of the country. Rapid growth fueled by declining prices, coupled with falling costs, has induced new facilities-based entry with significant nationwide coverage. The Bell Companies, once they satisfy the requisite statutory criteria and are permitted to provide long-distance service in their regions, will

provide additinal future competition with nationwide coverage. In the interexchange market, both resellers and business customers bargain for special deals to purchase bulk services, driving prices down to competitive levels. Residential retail consumers frequently change their carriers, in response to fiercely competitive pricing, marketing and advertising. Competition reaches all levels of the market, and the merger will permit MCI and WorldCom to compete more efficiently in this dynamically competitive market.

3. International. The international market should be defined as a single worldwide market, since there is no evidence that the merging companies will be dominant in any particular route or in any particular country. The international market is presently highly competitive. There are a large number of significant actual competitors, as well as potential competitors, including, among others, the Bell Companies and incumbent foreign carriers seeking to originate traffic in the U.S. market. Transoceanic cable capacity is rapidly expanding, and ownership of that capacity is divided among several well-established competitors. The merger will not diminish competition in the international market. The merged company will not be able to dominate any international routes. No foreign carrier is involved directly in the merger, and there is no danger that the merged company would be able to control international access to any particular country. After the merger, there will be a large number of carriers competing for the international business of business customers. And the elimination of WorldCom as a separate competitor for mass market international customers will not adversely affect competition. WorldCom is not among the most significant participants in this market segment, because it lacks the brand name recognition and customer base of AT&T, MCI, Sprint, GTE, and the Bell Companies. The merger will result in significant savings in the international market, including a decrease in above-cost termination rates that MCI and WorldCom must presently pay to foreign carriers and pass on to their U.S. customers.

4. **Internet.** The Internet should be analyzed as a single product market, national, if not international, in geographic scope. The Internet is characterized by vigorous competition, easy entry, open architecture and -- as a result -- dramatic growth and a large number of actual and potential competitors. No single company could even begin to dominate this huge and complex network of networks connecting thousands of ISPs through a protocol designed specifically to permit the routing of transmissions over an almost infinite variety of paths. Any attempt by any one ISP to try to raise prices to other ISPs or retail customers or to degrade the quality of service would only cause other participants to avoid that ISP, leaving it with fewer customers and reduced market share. Nor should the Commission accept the Commenters' invitation to impose conditions relating to the Internet. That would constitute a form of regulation, contrary to the express Congressional policy of preserving the Internet "unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2).

5. **Other issues.** The management of both companies is firmly committed to continuing their companies' present commitment to residential service following the merger. MCI's large base of long-distance residential customers represents a significant marketing opportunity for the combined company's local exchange offerings and other services. Residential customers will also be important to fill the company's network capacity during off-peak hours. The economics of the merger reinforces the companies' commitment to serve residential customers.

There is no substance to the charge that the companies will not be committed to serving minority customers. In its retail long-distance business, MCI has a strong record of service to the minority community. By way of illustration, MCI's recently-announced joint venture with Telefonica de Espana confirms management's continuing commitment to serve the rapidly growing

Hispanic market in this country.

Hearings are not necessary to resolve the issues in this proceeding, which are of an economic and policy nature, rather than factual. The showing that has been made of predicted competitive benefits and merger-related efficiencies has been more than sufficient. There is no need for production of the confidential Hart-Scott-Rodino documents.

Finally, there is no basis for linking this proceeding to BOC interLATA entry, or to individual contractual grievances. Nor is there any basis for believing that the transaction will undermine universal service.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of WorldCom, Inc. and	)	
MCI Communications Corporation for	)	CC Docket No. 97-211
Transfer of Control of MCI Communications	)	
Corporation to WorldCom, Inc.	)	

To: The Commission

SECOND JOINT REPLY
OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION

WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI," and, together with WorldCom, hereinafter, the "Applicants"), by their undersigned counsel, hereby submit this Second Joint Reply pursuant to the Commission's Order released February 27, 1998.[1] This Second Joint Reply not only discusses the application of the merger to the framework the Commission articulated in the *Bell Atlantic/NYNEX*[2] and *BT/MCI*[3] proceedings as requested in the February 27, 1998 Order, but also responds to the various comments filed March 13, 1998, regarding the Joint Applicants' Joint Reply, filed January 26, 1998.

[1] Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., *Order*, CC Docket No. 97-211 (rel. Feb. 28, 1998).

[2] Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, *Memorandum Opinion and Order*, FCC 97-286, 9 Comm. Reg. (P&F) 187 (rel. Aug. 14, 1997) ("*Bell Atlantic/NYNEX*").

[3] The Merger of MCI Communications Corporation and British Telecommunication plc, *Memorandum Opinion and Order*, GN Docket No. 96-245, FCC 97-302 (rel. Sep. 24, 1997) ("*BT/MCI*").

I. INTRODUCTION

The merger of WorldCom and MCI will serve the public interest because it will increase competition in key telecommunications markets, particularly the local exchange market, while posing no significant risk to competition in any market.

Application of the *Bell Atlantic/NYNEX* factors for merger analysis confirms this conclusion. The Commission applies *Bell Atlantic/NYNEX* flexibly, in light of the nature of the firms and markets involved. In this case, both merger partners are non-dominant firms, and the markets are rapidly changing. As applied to this case, the *Bell Atlantic/NYNEX* factors demonstrate that there are no adverse competitive impacts to offset the considerable public interest benefits of the merger.

The local exchange market is now dominated almost totally by the incumbent local exchange carriers, who control more than 98 percent of local revenues and access lines. The incumbents receive revenues of over $100 billion a year. If monopoly margins in this market can be reduced by more forceful competition, the consumer benefit will be enormous. The merger will create a stronger competitor in the local market by combining two companies with complementary advantages. The combination of MCI's marketing expertise and expansive residential and large business base with WorldCom's diverse business base and extensive local networks will make the merged company far better able to compete in more locations than either company standing alone. Moreover, the savings resulting from the merger will make the combined company's operations more efficient and better enable it to expand its networks and provide quality service at competitive prices. The merger will create no competitive problems in the local exchange. Creation of a new company better able than the two separate companies to challenge the dominant incumbent will strengthen, not diminish competition.

The merged company poses no risk of domination of any market. The interexchange market is robustly competitive today. Rapid growth fueled by declining prices and costs have induced a flood of new facilities-based entry. The Bell Companies, once they have met the statutory market-opening criteria and are authorized by the Commission to provide long-distance service in their regions, will likely provide significant future competition. The merger will not permit MCI and WorldCom to dominate any part of this market.

The international market is vigorously competitive, and will only grow more competitive as a result of the WTO Agreement on Basic Telecommunications Services. Future competitors include, among others the Bell Companies and incumbent foreign carriers seeking to originate traffic in the U.S. market. Transoceanic cable capacity is rapidly expanding, and ownership of that capacity is divided among many well-established competitors. The merged company will not be able to dominate any international routes.

The Commission should review the Internet aspects of the merger consistent with the Congressional policy of preserving the Internet "unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2). The merger will not enable the combined company to dominate the Internet. The Internet is characterized by vigorous competition, easy entry, open architecture and -- as a result -- dramatic growth. No single company could even begin to dominate this huge and complex network of networks connecting thousands of ISPs through a protocol designed specifically to permit the routing of transmissions over an almost infinite variety of paths.

The management of both companies firmly intends to continue their companies' present commitment to residential service following the merger. MCI's large base of long-distance residential customers represents a significant marketing opportunity for the combined company's local exchange and other services. Residential customers will also be important to fill the company's network capacity during off-peak hours. The economics of the merger reinforces the companies' commitment to serve residential customers.

There is no substance to the charge that the companies will not be committed to serving minority customers. In its retail long-distance business, MCI has a strong record of service to the minority community. By way of illustration, MCI's recently announced joint venture with Telefonica de Espana confirms management's continuing commitment to serve the rapidly growing Hispanic market in this country.

It is noteworthy that the principal critic of this merger is GTE, a disappointed bidder for MCI and incumbent local monopolist understandably disquieted by the prospect that the merger will create a strong facilities-based local competitor. Joining GTE are two incumbent BOCs who share the same concern, and who seek to use this proceeding -- along with virtually every other opportunity -- to reflexively advance their Section 271 agenda. It is in that context that these commenters' requests for further information, further analysis, and a hearing should be viewed; these requests are not designed to obtain further information useful to the Commission, but only to delay and obstruct.

The Application and its supporting documents, as supplemented by the additional information supplied in this Second Joint Reply, contain more than sufficient information to establish that the merger is in the public interest. The merger therefore should be promptly approved.

II. THE MERGER OF MCI AND WORLDCOM WILL CREATE A STRONG COMPETITOR IN THE LOCAL EXCHANGE MARKET

In the Joint Reply, we demonstrated the huge consumer benefits that will accrue if real competition is brought to the local exchange market. Investment, innovation, and competition – with the attendant pro-consumer effects on price and service quality – are the key drivers of the merger of WorldCom and MCI. The merger, by creating a local competitor with a presence in 100 markets on the day of closing, will put MCI WorldCom in a stronger position than any previous competitor to mount a significant challenge to the incumbent local exchange monopolies, thereby attacking the enormous monopoly profits that are being collected from consumers. No commenter disputes these facts.

The following discussion responds to the Commission's request for analysis similar to that provided in the *Bell Atlantic/NYNEX* case. We also respond to commenters' arguments.

A. Relevant product and geographic markets.

The first step in a merger analysis is to define the relevant product and geographic market. The Commission has followed the approach taken in the *LEC In-Region Interexchange Order,*[4] defining a product market as a service or group of services for which there are no close demand substitutes.[5] The Commission grouped the product markets for local exchange and exchange access

---

[4] Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Areas and Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Second Report and Order,* CC Docket No. 96-149, and *Third Report and Order,* CC Docket No. 96-61, FCC 97-142 (April 18, 1997), ¶ 43 (*"LEC In-Region Interexchange Order"*).

[5] *Bell Atlantic/NYNEX,* at ¶ 50 *citing LEC In-Region Interexchange Order.*

together, finding that each faces the same levels of competition.[6] Bundling of local exchange and exchange access with long distance services was also identified as a future product market that must be considered.[7] The Commission identified three customer groups as having similar patterns of demand: (1) residential customers and small businesses; (2) medium-sized businesses; and (3) large businesses/government users. For the purposes of defining a geographic market, the Commission found that it would include an area in which all customers in that area face the same competitive alternatives for a product.[8]

Following the Commission's analysis in these prior cases, the Commission should analyze the merger of WorldCom and MCI, two companies with competitive local exchange assets and business plans, under the local exchange and exchange access product market definition it has previously adopted. The product market should be defined by metropolitan area, reflecting the pattern of investment that new entrants into local markets make; for example, metropolitan area fiber rings, coupled with local switches, are the first step in establishing a local network for new entrants. The analysis should also reflect the limited, but growing, competition for business services, as well as the potential for competition for services provided to mass market (residential and small business) customers. In our view, there is no meaningful distinction to be made between large business customers and medium-sized ones, as the Commission made in *Bell Atlantic/NYNEX*. Both medium

---

[6] Nor did the Commission find that there was any reason to break the local exchange and exchange markets into route-specific markets, given that each route faced the same level of competition. *Bell Atlantic/NYNEX,* at ¶ 51.

[7] *Bell Atlantic/NYNEX,* at ¶ 53.

[8] *Id.,* at ¶ 54.

and large business customers are served via face-to-face sales and customer service representatives and contract-type tariffs, and both have requirements for both switched and dedicated access to the network. The Commission has itself noted that while the "local exchange market" could be broken down into hundreds of separate geographic sub-markets, there is no practical reason to do so, because in every sub-market one would encounter a single unavoidable fact -- overwhelming dominance by the incumbent local exchange monopoly. As stated in our Joint Reply, even in the market for business customers in the New York Metropolitan Area -- probably the most competitive local exchange market in the country -- the incumbent has retained some 94% of the business. Joint Reply at 8-9, 13-14. Defining sub-markets, as GTE urges, makes no practical sense when the only effect would be to vary the incumbent's share, depending upon metropolitan area, from 94% in New York to nearly 100% of the market in every other metropolitan area.

Nor does it make sense to analyze closely the 26 cities in which MCI and WorldCom have local exchange facilities to determine the alleged extent of the overlap. In the first place, there is no "overlap" in the sense that the term has been used in previous antitrust analysis. Unlike the situation where a merger of two steel companies might lead to the closing of a factory, the instant case does not present a case of redundant facilities. Rather, MCI WorldCom intends to use all available facilities as it attacks local monopoly markets. And the fact that both MCI and WorldCom may currently have local facilities in some markets is not significant. Even if the overlap were total,[9] that would have no competitive significance in a market where the incumbent has an average of 99% of

[9] As pointed out previously, MCI and WorldCom networks in the same city frequently do not reach the same customers, do not serve the same buildings, do not traverse the same streets and are not configured in a similar manner. *See* Joint Reply at 16-17.

the business. In that situation, as we previously pointed out, the HHI increase resulting from a merger of two competitors sharing a portion of the remainder is insignificant. Joint Reply at 13-14. And if the efficiencies resulting from elimination of the overlap result in a stronger local competitor --that, for the first time, is able to attack the incumbent's monopoly--the consumer benefits are huge.

Moreover, the metropolitan areas in which MCI and WorldCom have local facilities tend to be marked by the presence of multiple competitors.[10] Applicants have not been able to identify a single metropolitan area where, due to the merger, only a single local competitor will be left to attack the incumbent monopolist's market share. Most of the entry is occurring in and around large metropolitan areas where the concentration of customers is high and multiple new entrants are generally evident.

The ineluctable fact is that these markets are all subject to the near-total domination of the incumbent local exchange carriers. However defined, this merger involves two companies with a tiny share of the market facing an incumbent with a share of at least 94%, and in most areas 99-100%. Under the Merger Guidelines, such a merger raises no antitrust concerns.

---

[10] *See* 1997 Annual Report on Local Telecommunications Competition by New Paradigm Resources Group and Connecticut Research.

B. Actual and potential competitors

The next step in the Commission's analysis is to identify participants in the market. This includes both actual and potential competitors.[11] The purpose of the analysis is to identify "significant" competitors, and includes an evaluation of whether the competitor (a) has the capabilities and incentives that would make it "reasonably likely" that entry will occur under the terms of the Act and (b) would exert downward pressure on prices, or exert a positive influence on innovation and service quality in the absence of regulatory mandates to do so.[12]

In deciding how many market participants must remain in a market for competitive concerns to diminish, the Commission has noted that it would depart from the *1984 Merger Guidelines*, in recognition of the fact that local exchange and exchange access markets have been *de facto* and *de jure* monopolies under the regulatory regime that existed prior to the passage of the Telecommunications Act of 1996.[13]

In the *Bell Atlantic/NYNEX* case, the significant market participants in local markets were identified as the incumbent monopolist, AT&T, MCI, and Sprint. As the Commission stated in its *Bell Atlantic/NYNEX* decision, the capabilities and incentives of the three largest interexchange carriers make it highly likely that they will be significant players in local markets.[14] It is certainly true, as the Commission has found, that other interexchange carriers do not have as large a customer

---

[11] *Bell Atlantic/NYNEX,* at ¶¶ 59-60. We have not identified any entrants who are precluded entrants as a matter of law.

[12] *Id.,* at ¶ 61.

[13] *Id.,* at ¶¶ 66-68.

[14] *Id.,* at ¶ 82.

base, or the financial resources to address product markets, especially for mass market offerings. WorldCom, for example, is not a major participant in the residential long distance market. Similarly, cable television companies have generally backed away from early announcements to enter telephony, citing the cost of upgrading their cable networks to accommodate telephony. Nor has the Commission considered competitive access providers – even large ones – as significant participants.[15] For this reason, WorldCom's acquisition of MFS and Brooks Fiber, while making it a large CAP, would not itself qualify WorldCom as a significant participant under the Commission's definition as set forth in *Bell Atlantic/NYNEX*.

But there is no reason to believe that the few carriers identified in the New York case are the only significant participants who could emerge in local markets around the nation. In the Joint Reply, the Applicants demonstrated that, in the long distance market, after MCI served as an "icebreaker" against AT&T's domination of the market, a parade of competitors followed. In that context, the Applicants demonstrated that there were several potential competitors that might become significant once the merged MCI WorldCom "breaks the ice" in the local exchange market. Joint Reply at 17-18. Most significant of these would be AT&T, which has recently announced its intention to acquire TCG, and Sprint. Many other competitors would follow – including other interexchange carriers and CAPs. While not significant participants as the Commission defined the term in the *Bell Atlantic/NYNEX* case, these players have the potential to grow and/or merge into participants of considerable size and clout.

GTE criticizes the Applicants for having named too many companies as significant

[15] *Id.*, at ¶ 88.

competitors in the local market. If one simply looks at the present situation without the merger, there are *no* significant actual competitors other than each incumbent local exchange carrier in its own service area, because no competitor has more than a minuscule market share. Nor are there any significant potential competitors without the merger, given the present condition of the local markets and the present barriers to entry. As the proponents pointed out in the Joint Reply, there are numerous companies that might enter the local markets once the Telecommunications Act of 1996 becomes fully implemented and those markets are truly open to competition.[16] But that has not yet happened, and until those conditions change, what is important now is not how many actual or potential competitors exist, but whether a competitor can be created to mount an effective challenge to the incumbent monopolies.

C. The merger will enhance competition in local exchange and exchange access markets

The Commission has stated that its analysis will review the extent to which a merger will increase market power or enhance the ability to maintain market power.[17] The Commission has also noted that in the ordinary course, its analysis will follow the *1992 Horizontal Merger Guidelines*. The special case noted in the *Bell Atlantic/NYNEX* order, in which an incumbent monopolist merges with a new entrant, is not presented by the facts of the WorldCom and MCI combination.

Under the Commission's market analysis, there is no concern raised by the combination of

---

[16] As pointed out in the Joint Reply, actual competitors would have to include the many CLECs now in the market (the New York City area, for example, numbers at least 13 in addition to MCI and WorldCom), and potential competitors would have to include the adjacent ILECs. Joint Reply at 17.

[17] *Bell Atlantic/NYNEX*, at ¶ 95.

WorldCom and MCI in the local exchange or exchange access market. As stated in our Application and Joint Reply, neither company individually serves more than a tiny fraction of local markets – and this is true in every metropolitan area in which we provide service. The market power is held entirely by the incumbent. It is this merger, positioning MCI WorldCom as a stronger new entrant, that has the potential to turn the tide from an environment in which the incumbent has kept the new entrants competing "on the fringe" to one where true competition has the potential to evolve.

1. A new entrant without market power cannot engage in unilateral action to the detriment of consumers and competition.

As we have previously argued, there is no potential that MCI WorldCom can engage in unilateral conduct to harm consumers and competition. Moreover, since the merger does not eliminate a significant participant in the local exchange or exchange access markets – and indeed *strengthens* one of the non-incumbent participants, MCI – there is no reason for the Commission to be concerned about the potential for any unilateral action on MCI WorldCom's part that could harm competition. Nor is there any reason, for the purposes of this analysis, to distinguish between the three customer segments – mass markets, medium-sized business, or large business product markets. The picture for each is the same – a dominant player and several significant new entrants who to date have been unsuccessful in capturing even a modest level of market share.

Several parties attempt to argue that MCI WorldCom will distinguish between the three customer segments as we continue our efforts to enter local markets. The arguments are typically that, for financial reasons, MCI WorldCom will focus on business customers to the exclusion of residential customers. Significantly, no commenter has advanced any reason why the merger will render residential business unprofitable when it was profitable before the merger. Indeed, the opposite is true. In a market where the ability to sell a total package of local, long distance, Internet and international services will be a key to success, it makes no sense to conclude that the merged company will abandon local service as one key element of that package, while expecting to expand its sale of the other elements. Moreover, residential customers are important because they fill network capacity during off-peak hours for business traffic. The merged company will have a bigger network to fill, thus increasing the importance of residential customers.[18]

In arguing that the merged company will treat residential customers differently than MCI would have done absent the merger -- despite nothing in the economics of the merger to justify this difference -- the opponents are relying exclusively on the argument that the two companies have made different statements of intention. Our intentions are clear. Bert Roberts, the Chairman of the merged company, and Bernard Ebbers, the Chief Executive Office, have reaffirmed the commitment of both companies to residential customers.[19]

2. Bundled services provide no opportunity for MCI WorldCom to exercise market power.

The Commission has also noted the likely evolution of a product market for bundled services. New entrants such as MCI and WorldCom can today bundle local and long distance services to customers when offering those services over their own facilities. The incumbent is currently barred

---

[18] As MCI's President has explained, "You build capacity to handle the needs of your business customers during the work week in the daytime, and you have to start recruiting residential customers who use the network mostly at night and on weekends. That's the only way you can get efficient use of your capacity." Jon Van, "MCI Deal May Cut Consumer Phone Bills," *Chicago Tribune*, Nov. 11, 1997.

[19] *See* Letter to Chairman William Kennard, Federal Communications Commission, from Bernard J. Ebbers, President and CEO, WorldCom, Inc., and Bert C. Roberts, Jr., MCI Communications Corporation, dated January 26, 1998. The letter is attached as Attachment A.